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...gh COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.1816/2006

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Petitioner : Nand Kumar Shukla, aged about 52 years, son of Shri Ram Khilawan, Secretary, Sarpanch Sangh Vikas Khand, Gunderdehi, resident of Mediyapar, PO Sikosa, Tahsil Gunderdehi, Distt. Durg (C.G.)

Versus

Respondents :
1. State of Chhattisgarh, through - the Secretary, Department of Finance and Planning, Dau Kalyan Singh Bhawan, Chhattisgarh Secretariat, Raipur (Chhattisgarh)
2. The Secretary, Department of Panchayat and Rural Development, Dau Kalyan Singh Bhawan, Raipur (CG)
3. The Director, Department of Panchayat and Rural Development and Social Welfare, Dau Kalyan Singh Bhawan, Raipur (C.G.)
4. Collector, Distt. Durg (C.G.)

W.P.No.1693 of 2004

Petitioners :
1. D.R.Nureti, S/o Kattiram Nureti, Aged about 49 years.
2. S.D.Manjhi, S/o Lachhiram Manjhi, Aged about 48 years.
3. V.N.Netam, S/o Late Shri Sagram Netam, Aged about 49 years.
4. T.P.Shukla, S/o Shri L.L.Shukla, Aged about 40 years.
5. G.N.Lakshman Rao, S/o Late Shri G.N.Lakshman Rao, Aged about 52 years.
6. S.K.Manjhi, S/o Late Shri Narayan Singh Manjhi, Aged about 51 years.

All the petitioners are working as Sub-Auditors in the Department of Panchayat & Social Welfare with their headquarters at Bastar, District Bastar (C.G.)

Respondents : 1. State of Chhattisgarh, Through - the Secretary, Department of Finance and Planning, Mantralaya, Dau Kalyan Singh Bhawan, Chhattisgarh, Raipur (Chhattisgarh)

: 2. Secretary, Department of Panchayat and Rural Development, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)

: 3. Director, Panchayat and Rural Development and Social Welfare, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)

W.P.No.1691 of 2004

Petitioners : 1. Top Singh Tandon, S/o Golam Das Tandon, Aged about 50 years.

: 2. G.K.Sharma, S/o Late Shri Lakhan Prasad Sharma, Aged about 54 years.

: 3. R.K.Yadav, S/o Lakhanlal Yadav, Aged about 50 years.

: 4. T.K.Chandrakar, S/o Shri Kejuram Chandrakar, Aged about 51 tears.

All the petitioners are working as Sub-Auditors in the Department of Panchayat & Social Welfare with their headquarters at Bastar, District Bastar (C.G.)

Versus

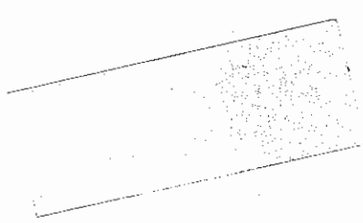
Respondents : 1. State of Chhattisgarh, Through - the Secretary, Department of Finance and Planning, Mantralaya, Dau Kalyan Singh Bhawan, Chhattisgarh, Raipur (Chhattisgarh)

: 2. Secretary, Department of Panchayat and Rural Development, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)

: 3. Director, Panchayat and Rural Development and Social Welfare, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)

W.P.No.1692 of 2004

Petitioners : 1. B.R.Netam, S/o Late A.R.Netam, Aged about 53 years.



: 2. P.D.Baghel, S/o Late S.R.Baghel, Aged about 45 years.
: 3. N.R.Khapardey, S/o Late R.S.Khapardey, Aged about 52 years.
: 4. B.R.Patel, S/o Fagunaram Patel, Aged about 52 years.
: 5. J.P.Thakur, S/o Late Ghasia Ram, Aged about 54 years.
: 6. J.L.Chandrakar, S/o C.L.Chandrakar, Aged about 47 years.
: 7. Smt. Gouri Banchhore, W/o Late Gopal Banchhore, Aged about 47 years.

All the petitioners are working as Sub-Auditors in the Department of Panchayat & Social Welfare with their headquarters at Bastar, District Bastar (C.G.)

Versus

Respondents : 1. State of Chhattisgarh, Through - the Secretary, Department of Finance and Planning, Mantralaya, Dau Kalyan Singh Bhawan, Chhattisgarh, Raipur (Chhattisgarh)
: 2. Secretary, Department of Panchayat and Rural Development, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)
: 3. Director, Panchayat and Rural Development and Social Welfare, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)

W.P.No.2174 of 2004

Petitioners : 1. F.B.Kurre, S/o Shri J.R.Kurre, Aged about 35 years,
: 2. B.K.Yadu, S/o Shri K.P.Yadu, Aged about 49 years.
: 3. K.L.Sahu, S/o Shri Sadhuram Sahu, Aged about 49 years.

All the petitioners are working as Sub-Auditors in the Department of Panchayat & Social Welfare with their headquarters at Bastar, District Bastar (C.G.)

Versus

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Respondents : 1. State of Chhattisgarh, Through - the Secretary, Department of Finance and Planning, Mantralaya, Dau Kalyan Singh Bhawan, Chhattisgarh, Raipur (Chhattisgarh)
: 2. Secretary, Department of Panchayat and Rural Development, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)
: 3. Director, Panchayat and Rural Development and Social Welfare, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)
: 4. Director, Local Fund Audit Department, Raipur, District: Raipur (C.G.)

W.P.No.1035 of 2005

Petitioner : Kamal Singh Kunjam, S/o Shri Shyam Singh Kunjam, Aged about 40 years, Presently Elected Sarpanch of Gram Panchayat: Chikhli, Block: Dondi, District: Durg (C.G.)

Versus

Respondents : 1. State of Chhattisgarh, Through - the Secretary, Department of Finance and Planning, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)
: 2. Secretary, Department of Panchayat and Rural Development, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)
: 3. Director, Panchayat and Rural Development and Social Welfare, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)
: 4. Director, Local Fund Audit Department, Raipur, District: Raipur (C.G.)

Shri B.D.Guru, Counsel for the petitioners. (W.P.Nos.1691/2004, 1692/2004, 1693/2004 and 2174/2004)
Shri Y. Chaturvedi, Counsel for the petitioner (W.P. No.1816/2006)
Shri Malay Kumar Bhaduri, Counsel for the petitioner (W.P.No.1035/2005)
Shri Ravish Chandra Agrawal, Advocate General with Shri Utkarsh Verma, Dy. A.G. for the State.

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ORAL ORDER
(Passed on 27th June 2006)

The following oral order of the Court was passed by S.R.Nayak, C.J.

In this batch of writ petitions, the validity of notification dated 5.2.2004 issued by the Government of Chhattisgarh under sub-section (1) of Section 4 of the Chhattisgarh Sthaniya Nidhi Sampariksha Adhiniyam, 1973 (for short '1973 Adhiniyam') is assailed.

2. There is no need for the Court to refer to the facts of these cases. The validity of the impugned notification is assailed only on one ground. The common contention of the learned counsel for the petitioners is that inclusion of Gram Panchayats in the impugned notification is invalid and unconstitutional for the reason that Section 129 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short '1993 Adhiniyam') also provides for auditing the accounts of the Panchayats; since 1993 Adhiniyam is a special enactment in relation to 1973 Adhiniyam which is a general enactment, the provisions of Section 129 of Adhiniyam 1993 are prevailed over the provisions of Section 4 of 1973 Adhiniyam. That was the only contention urged before us by the learned counsel for petitioners led by Shri B.D.Guru, learned counsel for the petitioner in W.P.No.1693/2004.

3. Shri Ravish Chandra Agrawal, learned Advocate General who appeared for the State supported the validity of impugned notification and drew our attention to the history of the legislation as set out in the return and pointed that Gram Panchayats were in fact included in the schedule as far back as on 9.8.1983 itself and since then the accounts of the Gram Panchayats have been regularly audited under the 1973 Adhiniyam. Learned Advocate General would also submit that there is absolutely no conflict between 1973 Adhiniyam and 1993 Adhiniyam, and that though the Rules framed under these Adhiniyams, in certain respects, are overlapping, they are not identical. In other words, according to the learned Advocate General, the Rules framed under the above two Adhiniyams cover certain

aspects, not covered by each other. He would also submit that since sub-Section (2) of Section 4 of 1973 Adhiniyam has enacted *non-obstante* clause, the notification issued under sub-Section (1) of Section 4 of 1973 Adhiniyam has overriding effect over the provisions of Section 129 of 1993 Adhiniyam and the Rules framed thereunder.

4. Having heard the learned counsel for the parties, we are of the considered opinion that the petitioners have not made out any ground whatsoever to invalidate the impugned notification on any permissible legal or unconstitutional ground. It is trite that the impugned notification is a piece of delegated legislation made by the State Government by virtue of the power conferred under sub-section (1) of Section 4 of Adhiniyam 1973. It is well settled that the validity of a delegated legislation could be impugned successfully only on certain grounds, such as; that the impugned delegated legislation is *ultra vires* the Parent act; that it violates part-III of the Constitution of India or any other provisions of the Constitution; the mandatory procedure prescribed under Parent Act was not adhered to by the Rule-making Authority in enacting such delegated legislation or in certain cases the delegated legislation is *ex facie* arbitrary, unreasonable or mala fide etc.

5. The only point urged by the learned counsel for the petitioner noted above, in our considered opinion, is not well founded. At the threshold, it needs to be noticed that simply because the accounts of the Gram Panchayat are liable to be audited both under 1973 Adhiniyam as well as 1993 Adhiniyam, only on that ground and without anything further it, could not be said that the impugned notification renders itself as invalid. There is no legal or constitutional impediment for the law-maker to enact a provision within the domain of their legitimate legislative sphere to subject the accounts of the Gram Panchayats to audit and command submission of the audit reports. It also needs to be noticed that in the instant case, there is

absolutely no conflict or repugnancy between the provisions of Section 4 of 1973 Adhiniyam and Section 129 of 1993 Adhiniyam.

6. Provisions of Section 4 of 1973 Adhiniyam and Section 129 of 1993 Adhiniyam read as under:

> **"4. Submission of accounts for audit and payment of audit fees.**-(1) The State Government may, by notification declare that the accounts of such local authority, as may be specified in the notification shall be subject to audit under this Act.
>
> (2) On the issue of a notification under sub-section (1), the accounts of the local authority specified therein shall, notwithstanding anything contained in any enactment by which such local authority is constituted or in any rules made thereunder, be subject to audit in all respects in the manner provided by or under the 1973 Adhiniyam.
>
> (3) The local authority shall be liable to pay such audit fees as the State Government may, from time to time, specify in that behalf."
>
> **"129. Audit of Panchayats.**-(1) There shall be a separate and independent Audit Organisation under the control of the State Government to perform audit of accounts of Panchayats.
>
> (2) The Audit Organisation shall consist of such officers and servants, to be appointed by the State Government, as the State Government may deem fit from time to time.
>
> (3) The manner of audit of Panchayat accounts, payment of audit fees and action on such audit reports shall be such as may be prescribed."

It is clear that both the provisions are intended to achieve the same objective, i.e., the funds and finances of the local bodies in which the State has high stake should be audited regularly under both the enactments so that the State could know whether local bodies spend public money for the purposes for which it is intended and in accordance with the law and the prescribed procedure so that in case

of default, the State can take corrective measures to safeguard the public interest. Since there is no conflict between the two provisions, there is no need for us in this case to decide whether between the two provisions i.e. Section 4 of 1973 Adhiniyam and Section 129 of 1993 Adhiniyam, which is general provision and which is special provision. Suffice it to state that even assuming that the 1993 Adhiniyam is a special enactment, as contended by Shri B.D.Guru, that fact itself would not in any way help the petitioners to sustain their challenge successfully. It is for the simple reason that sub-section (2) of Section 4 of 1973 Adhiniyam enacts a *non-obstante* clause. Sub-section (2) of Section 4 provides that on the issue of a notification envisaged under sub-clause (1) of Section (4) of 1973 Adhiniyam, the accounts of the local authorities specified therein shall, notwithstanding anything contained in any enactment by which such local authority is constituted or in any rules made thereunder, shall be subject to audit in all respects in the manner provided by or under the 1973 Adhiniyam. Though we have already stated that there is no conflict between the two enactments, alternatively it needs to be noticed that even assuming that there is a conflict between the two provisions, by virtue of the *non-obstante* clause enacted in sub-Section (2) of Section 4 of the 1973 Adhiniyam, the provisions of Section 4 of 1973 Adhiniyam shall have overriding effect over the provisions of Section 129 of 1993 Adhiniyam and the Rules framed thereunder.

6. We have compared the provisions of Section 4 of Adhiniyam 1973 with the provisions of Section 129 of Adhiniyam 1993 and the Rules framed thereunder. As rightly submitted by learned Advocate General that some provisions of both the Adhiniyams and the Rules framed thereunder are identical, but the fact remains that the provisions enacted in 1973 Adhiniyam and the Rules framed thereunder are quite comprehensive and deal with all aspects of accounting and auditing and it also enacts a penalty clause for non-

compliance with the obligation to audit the accounts of Gram Panchayats. In other words, 1973 Adhiniyam is a Code in itself and it completely covers all aspects of submission of accounts as well as audit of the accounts on payment of audit fees not only with regard to Gram Panchayats but all local bodies.

7. In the result and for the foregoing reasons, the writ petitions are dismissed. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani